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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 93-53
KR PARTNERS	)	File No. BPH-911001MB
KES COMMUNICATIONS, INC.	)	File No. BPH-911003MH
LORI LYNN FORBES	)	File No. BPH-911004MH
For Construction Permit for a	)	
New FM Station on Channel 256C	)	
in Waimea, Hawaii	)	

To: Honorable Joseph P. Gonzalez  
Administrative Law Judge

**PETITION FOR LEAVE TO AMEND  
AND RE-SUBMISSION OF AMENDMENT**

KES Communications, Inc. ("KES"), by Counsel, and pursuant to §§1.65 and 73.3522(b) of the Commission's Rules, hereby submits the instant Petition for Leave to Amend and re-submitted Financial Amendment. In support hereof, KES submits the following:

**Background**

1. On 10 March 1993, KES filed a Section 1.65 Amendment to report a new source of financing. See, Attachment No. 1 (KES Amendment, date stamped by the FCC on 10 March 1993) Therein, KES submitted an Amendment Letter signed by Karen Slade, along with a letter from KES's original source of financing (which indicates a withdrawal of their financial commitment), and a new Section III page of FCC Form 301 to identify KES's new source of financing.

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2. Six days after KES filed its Amendment, the FCC released the *Hearing Designation Order* ("HDO")/<sup>1</sup> in this proceeding. The HDO indicates that it was "adopted" by the Commission on 1 March 1993. Because KES filed its Amendment between the time the Commission adopted and released the HDO, the Commission has advised KES to re-submit the Amendment since it was not filed in time for review and analysis by the Audio Services Division in preparation of the HDO./<sup>2</sup>

**Good Causes Exists For The  
Acceptance of The Amendment**

Section 73.3522(a)(6) of the Rules indicates that amendments filed after the period for filing amendments as of right "will be considered only upon a showing of good cause for late filing or pursuant to §1.65 or §73.3514." Amendments filed after issuance of the HDO must also meet a heightened good cause showing, as enunciated in *Erwin O'Connor*, 22 FCC 2d 140 (Rev. Bd. 1970).

When KES originally filed its Amendment on 10 March 1993, "good cause" was founded upon the applicant's §1.65 obligation to report any change in the information contained within its application. At that time, KES submitted a letter from its original source of financing that evidences the recent withdrawal of its financial commitment to KES. KES immediately

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<sup>1</sup> DA 93-239

<sup>2</sup> As a result of numerous telephone discussions on 19 March 1993, counsel for KES was advised by the FM Branch, Hearing Branch and the Presiding Judge's Office to re-submit the Amendment.

secured a new source of financing, and promptly filed its Amendment with the FCC.

KES is now faced with a unique situation: it must re-file a previously submitted pre-designation amendment, which may now

First Interstate Bank of California and secured a financial  
commitment from them. See, Attachment No. 3 (Financial

necessitate the modification or addition of issues or parties. Both the original and replacement financial commitment letters contain the requisite elements and language to constitute "reasonable assurance." See, *Scioto Broadcasters*, 68 RR 2d 195 (Rev. Bd. 1990); *Merrimack Valley Broadcasting, Inc.*, 82 FCC 2d 166 (1980); *Multi-State Communications, Inc. v. FCC*, 590 F2d 1117, 44 RR 2d 487 (DC Cir. 1978) (Both bank letters identify the borrower; indicate the amount of the loan; identifies the specific use of the loan; specifies the interest rate; specifies terms of repayment; identifies required collateral; identifies specific conditions for final approval of the loan; and indicates that the lender is familiar with borrower and/or borrower's credit history). Finally, since there is no question that KES was properly financially qualified when it filed its original application, there is no bar to accepting the financial amendment. See, *Aspen FM, Inc.*, 68 RR 2d 1635 (1991).

No Disruption to Hearing: Based upon the foregoing, the

amendment with respect to changing its source of financing)/<sup>4</sup>; Azalea Corp., 31 FCC 2d 561, 22 RR 2d 909 (1971) (no applicant has a vested interest in the disqualification or dismissal of another applicant).

No Competitive Advantage: Because the amendment addresses KES's basic qualifications to become a Commission licensee, it will not have any effect on the comparative merits of the various applicants. See e.g., HDO at para. 4.

**The Re-Submitted  
Financial Amendment**


Attached hereto as Attachment No. 1 is the Financial Amendment previously filed by KES on 10 March 1993.

**Conclusion**

WHEREFORE, the foregoing premises considered, KES respectfully requests that the instant Petition for Leave to Amend be GRANTED, and that KES's associated re-submitted Financial Amendment be ACCEPTED.

Respectfully submitted,  
  
KES COMMUNICATIONS, INC.

Meyer, Faller, Weisman  
and Rosenberg, P.C.  
4400 Jenifer Street, N.W.  
Suite 380  
Washington, D.C. 20015

By:   
Cary S. Tepper, Esq.  
  
Its Attorney

(202) 362-1100

March 22, 1993

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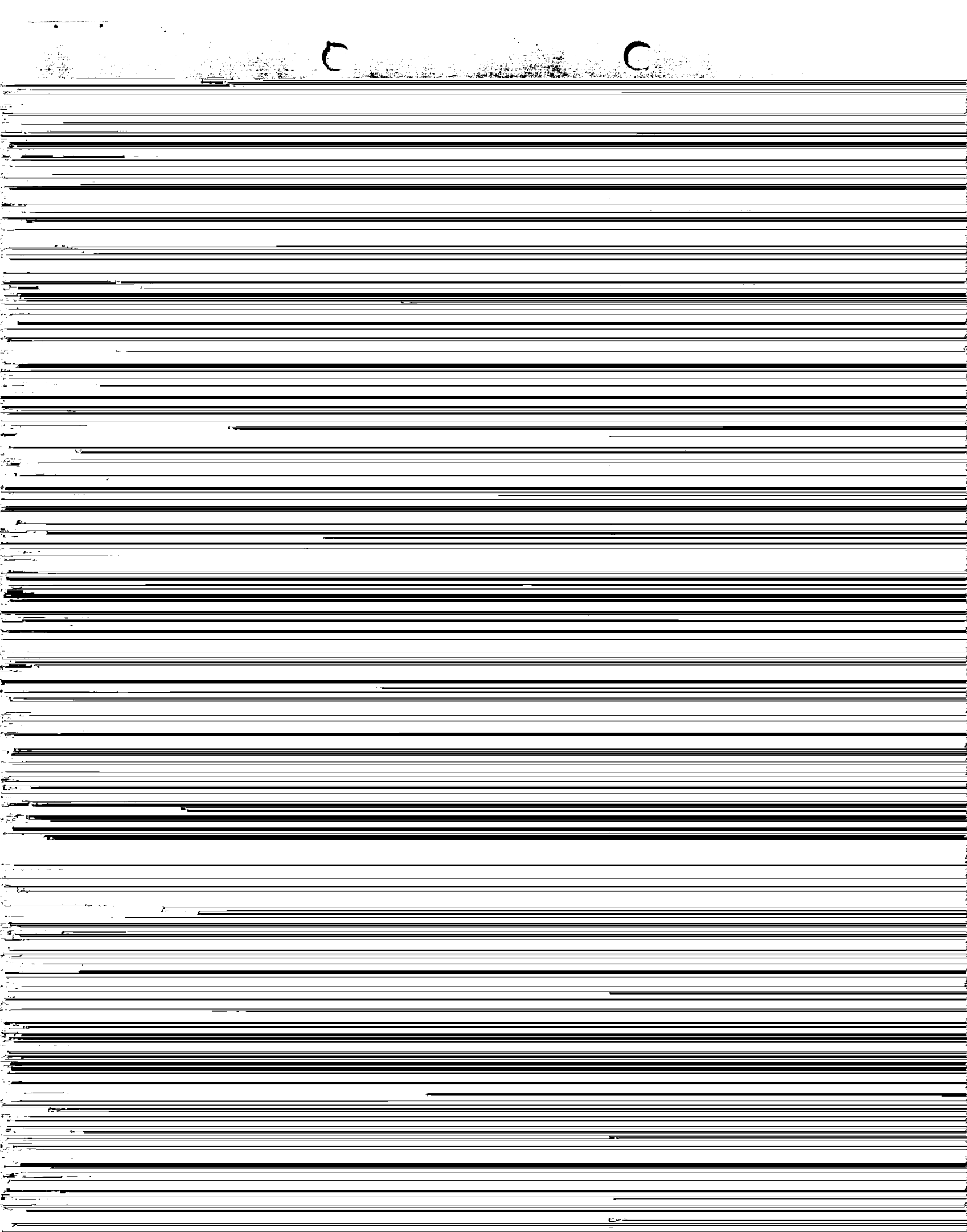
<sup>4</sup> However, unlike KR Partners, KES does not attempt to revise its cost estimates.

**ATTACHMENT No. 1**

**(KES Amendment filed 3/10/93)**







**SUPERIOR FINANCIAL  
MORTGAGE LENDING SERVICES**

77 N. Mentor Avenue, Suite 3  
Pasadena, CA 91106

Telephone (818) 793-3812  
Fax (818) 793-3996

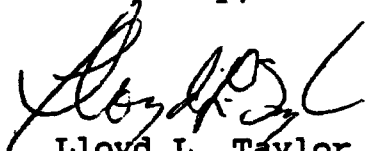
March 8, 1993

Ms. Karen Slade  
KES Communications, Inc.  
1148 South Citrus  
Los Angeles, CA 90019

Dear Ms. Slade:

This in reference to our financial commitment letter to you dated September 23, 1991 with respect to your proposal before the Federal Communications Commission to construct and operate a new FM radio station in Waimea, Hawaii. We regret to inform you that Superior Financial Mortgage Lending Services has recently decided not to pursue broadcast-related loans. This decision has nothing to do with your credit history, your current credit standing, or the particulars of your radio proposal. Rather, we have decided that broadcast-related loans do not conform to the long range objectives of our business. Accordingly, please take the necessary actions to notify the Federal Communications Commission that we can no longer provide reasonable assurance of financing for your radio proposal.

Sincerely,

  
Lloyd L. Taylor  
President

## SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds

☒ Yes ☐ No

**ATTACHMENT No. 2**

**(Financial Commitment Letter From Original Lender)**

**77 N. Mentor Avenue, Suite 3  
Pasadena, CA 91106**

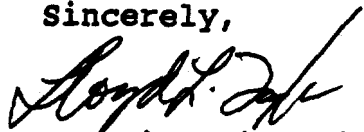
**Telephone (818) 793-3812**  
**Fax (818) 793-3998**

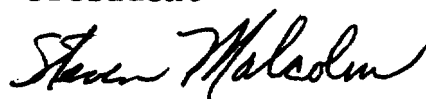
KAREN SLADE / K E S COMMUNICATIONS, INC.  
1148 SO. CITRUS AVE.  
LOS ANGELES, CALIFORNIA 90019

This letter will confirm the willingness of our institution to provide a loan to you or a corporation controlled by you in

1. No adverse changed conditions in the circumstances considered in our decision to make this loan available.
2. A satisfactory credit review.
3. The execution of loan documents (including, without limitation, security and guaranty agreements) all satisfactory to the institution and its counsel in their sole discretion.

Sincerely,

  
Superior Financial  
Lloyd Taylor  
President

  
Steven Malcolm  
V.P. Major Lending

**ATTACHMENT No. 3**

**(Current Financial Commitment Letter)**



First Interstate Bank  
of California  
Inglewood Main Office  
170 N. Market Street  
Inglewood, CA 90301  
213 671-7596

Brenda Bellard  
Vice President &  
Branch Manager

March 9, 1993

Ms. Karen E. Slade  
KES COMMUNICATIONS, INC.  
1148 South Citrus  
Los Angeles, CA 90019

Dear Ms. Slade:

This letter will confirm our willingness to loan you \$400,000.00 to finance the construction and initial working capital of your proposed new FM radio station in Waimea, Hawaii. You will need to meet the necessary Bank criteria to qualify for such a loan. The following terms and conditions are negotiable at the time of approval.

Term: (5 Years)

Repayment: Interest only in year one with principal amortized in full over the remaining years in equal installments.

Rate: To be determined upon commitment not to exceed prime plus 4% floating.

Collateral: Primary

1. Pledge of station assets and of stock of a corporation of the loan applicant.
2. Commercial Real Estate and/or Equipment.
3. Income from Business

Secondary

1. Personal Guarantee of Principals
2. Assets of Principals
3. Income of Principals

We understand that the Federal Communications Commission requires that you have reasonable assurance of the availability of the above described loan. This letter is intended to provide such reasonable assurance, but does not constitute a binding commitment on the part of the bank to make the loan. We are familiar with you and your credit history. Our willingness to make such a loan is expressly conditioned upon you and/or your corporations ability to meet all of the necessary criteria required by the bank & authorization from the Federal Communications Commission.

*We go the extra mile for you."*





First Interstate Bank  
of California  
Inglewood Main Office  
170 N. Market Street  
Inglewood, CA 90301  
213 671-7586

Brenda Bellard  
Vice President &  
Branch Manager

Page Two  
March 9, 1993

We will also require the necessary permits for construction of a site in Waimea, Hawaii. Your loan will also be subject to the following :

1. No adverse change in financial condition.
2. Another satisfactory credit review at the time of loan.
3. The execution of loan documents (including, without limitation, security and guaranty agreements) all satisfactory to the bank and its counsel at their sole discretion.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Brenda Bellard'.

First Interstate Bank  
Brenda Bellard  
Vice President &  
Branch Manager

*"We go the extra mile for you."*

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 22nd day of March, 1993, I have served a copy of the foregoing "Petition for Leave to Amend and Re-Submission of Amendment" first-class, postage-prepaid, on the following:

\*Hon. Joseph P. Gonzalez  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 221  
Washington, D.C. 20554

\*Gary Schonman, Esq.  
Hearing Division, Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554

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Washington, D.C. 20036  
(Counsel to Lori Lynn Forbes)

Mark Van Bergh, Esq.  
Waysdorf & Van Bergh  
1000 Connecticut Avenue, N.W.  
Suite 504  
Washington, D.C. 20036  
(Counsel to KR Partners)

  
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Cary S. Tepper, Esq.

\*denotes Delivery By Hand